

**DECISION**

118808 PLM-1  
Botsford

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE#:** B-206131**DATE:** June 25, 1982**MATTER OF:** Anthony F. Ruffo - Retroactive Discontinued Service Retirement

**DIGEST:** A former employee of the Naval Air Facility at Andrews Air Force Base seeks a retroactive change in his date of separation on discontinued service retirement due to the abolishment of his job. The duties of his job were combined with the duties of another position to form a new position established on July 31, 1980. The abolishment of the claimant's job and notification to him of his impending separation were delayed until October 1980. The delay is not an administrative error justifying the retroactive change of his separation date.

At the suggestion of the Office of Personnel Management, Mr. Anthony F. Ruffo, a former employee of the Naval Air Facility at Andrews Air Force Base, has requested our decision as to whether the date of his separation on discontinued service retirement may be changed from November 6, 1980, to August 30, 1980. The Office of Personnel Management (OPM) informed Mr. Ruffo that if our Office approved the retroactive change in his separation date, it would treat him as having served as a reemployed annuitant thereafter.

The issue we are presented is whether the Navy committed an error which justifies a retroactive change in Mr. Ruffo's separation date. For the reasons explained below we hold that the retroactive change may not be made.

There does not appear to be a major disagreement between the Navy and Mr. Ruffo concerning the facts of this case. Mr. Ruffo was employed in the position of Mobile Equipment Dispatcher, WG-5701-08, in the Transportation Operations Division of the Naval Air Facility when, on January 25, 1980, his supervisor was selected for a job at the Navy Yard. Mr. Ruffo was apparently detailed to the supervisory position from February 20, 1980, to June 26, 1980, although we have no documentation of the detail other than a memorandum to that effect in the file. During this period, on March 7, 1980, a new position description was prepared

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which, in essence, combined the duties of the supervisory position with the duties of Mr. Ruffo's position. The resulting position, Motor Vehicle Operator Foreman, WE-5703-06, was classified on July 31, 1980.

The Director of the Consolidated Civilian Personnel Office (CCPO) stated that it was management's intention to promote Mr. Ruffo to the new position. The Director of the CCPO has further informed us that Mr. Ruffo's selection could not be effected noncompetitively, and that a Staffing Specialist, unaware of the intent to promote Mr. Ruffo, offered the position to a candidate whose name appeared on a list compiled in connection with the Department of Defense Program for Stability of Civilian Employment. The list is designed to place Defense Department employees adversely affected by reductions in force. The CCPO Director has pointed out that the Staffing Specialist should not have offered the position to another registrant because he failed to take into account that the establishment of the new position would result in the abolishment of Mr. Ruffo's position, thus entitling him to equal placement assistance. However, on September 4, 1980, the other employee was offered and accepted the position. He reported for duty on September 21, 1980. On October 4, 1980, a Standard Form 52 (SF-52), Personnel Action Request, was prepared which abolished Mr. Ruffo's job as of October 10, 1980, and he received formal notice on October 27, 1980, that his separation would occur on December 27, 1980. The abolishment of Mr. Ruffo's position and notification to him of his separation were delayed, at first, while attempts were made to obtain an exception from the DOD Program for Stability of Civilian Employment so that the offer made to the other employee could be rescinded, and secondly, while a new position was established to ensure that Mr. Ruffo was provided opportunity for continued employment. The replacement position was established on October 16, 1980, but Mr. Ruffo declined the offered position, and instead chose to retire on the basis of discontinued service. His retirement became effective on November 6, 1980.

Mr. Ruffo contends that his job was actually abolished on July 31, 1980, when the new job was classified. He claims that he should have been notified of that fact and been given the opportunity to retire, not in October 1980, but sometime in August so that he could have elected to retire before August 30, 1980, in time to receive certain

cost-of-living adjustment benefits. The Director of the CCPO responded that Mr. Ruffo's contention that his job should have been abolished prior to October, 1980 was valid. He pointed out that the Navy's Civilian Manpower Management Instruction (CMMI) 511.7-1a provides that personnel actions should be completed not later than the beginning of the second pay period following the date of classification, which in this case would have been August 25, 1980.

The specific language of that regulation is as follows:

"a. Action by an agency. In the case of Department of the Navy classification actions, the following rules apply. When a vacant position has been classified, personnel action to fill it may be taken on or after, but not before, the date of classification action. When an occupied position has been classified, personnel action to put the person doing the work into the newly classified position, to put him into some other position, or to separate him, must be taken within the time limits stated below, even though an appeal has been, or is about to be, filed. The following time limits apply, except as conditioned by the situations indicated in FPM/CMMI 511.7-1c.

"(1) Not sooner than the date of classification action.

"(2) When classification action has been taken by the activity: Not later than the beginning of the second pay period following the date of classification action.

"(3) When classification action has been taken by OCMM: Not later than the beginning of the second pay period following the date of receipt of the notice of classification action by the activity."

As a general rule a personnel action may not be made retroactive so as to increase the right of an employee to compensation. We have recognized exceptions to this rule

him before it actually did. While paragraph 4-4 of FPM 511-15 makes clear that it is management's responsibility to maintain current and accurate position descriptions, there are no prescribed time frames for taking those actions. We do not believe we can characterize the delay in the present situation as error, especially in light of the attempts which were being made to place Mr. Ruffo in the newly classified job and to provide him with alternate employment.

As to the first exception to the general rule against retroactive personnel actions, error that prevents a personnel action from taking place as originally intended, we have no evidence that management intended to separate Mr. Ruffo sooner than it did. Therefore, there is no basis for allowing his request under this exception.

In its letter to Mr. Ruffo, OPM mentioned a Comptroller General decision approving a retroactive change in a separation date. That decision, Dale Ziegler and Joseph Rebo, B-199774, November 12, 1980, involved two employees who received reduction in force notices and were incorrectly advised by their agency that the circumstances of the reduction in force did not qualify them for discontinued service retirement. Based on that advice the employees accepted offers of other positions. Upon OPM's determination that another employee was eligible for discontinued service retirement under identical circumstances, the agency requested authority to retire the employees for involuntary separation even though they had accepted new positions. In that case, we held that the agency's failure to comply with regulations requiring the agency to obtain an advance decision from OPM when doubt exists concerning whether a separation is "involuntary" for retirement purposes, deprived the employees of the right granted them by statute and regulation to elect discontinued service retirements. To the same effect see Conrad A. Gevard, B-200796, February 19, 1981. In two more recent cases we have allowed retroactive changes in separation dates where the agencies involved did not provide the employees with advance written notice of their involuntary separation, thus depriving them of their right to elect discontinued service retirement. James J. Burns, B-202274, July 15, 1981; Michael J. Hanley, B-202112, November 16, 1981.

where a clerical or administrative error occurred that (1) prevented a personnel action from taking effect as originally intended (2) deprived an employee of a right granted by statute or regulation, or (3) would result in failure to carry out a nondiscretionary administrative regulation or policy. Douglas C. Butler, 58 Comp. Gen. 51 (1978); 55 Comp. Gen. 42 (1975).

At first glance it appears that the management at the Naval Air Facility failed to comply with the requirement of CMMI 511.7-1a to either transfer, separate, or put the individual occupying a position which has been classified into that position. Such error would bring this situation within the third exception mentioned above. However, we do not believe that regulation applies to the present situation because Mr. Ruffo did not occupy the new position that was established, and the regulation places time limits on an occupied position. On the description of that new position, Job Description #80-6, the following notation appears:

"Cancels JD #67-69, WS-5703-07, Motor Vehicle Operator Foreman"

Mr. Ruffo's position Job Description #67-61 is not mentioned. Thus, Mr. Ruffo's position of Mobile Equipment Dispatcher, Job Description #67-61, was in effect until October 10, 1980, when it was formally abolished.

With regard to our second exception to the general rule against retroactive personnel actions, a right granted by statute or regulation, 5 U.S.C. § 8336(d) provides employees the right to retire on the basis of discontinued service when they are involuntary separated from their jobs. Paragraph S11-2 of Federal Personnel Manual (FPM) Supplement 831-1 provides that job abolishment is considered involuntary separation. However, paragraph S11-2b of FPM Supplement 831-1, provides that an employee may not elect discontinued service retirement until he receives a written notice that he faces involuntary separation. Mr. Ruffo was given that notice on October 27, 1980. Therefore, he was not entitled to retire until then, and the date of his separation may not be changed unless we are able to determine that the agency violated some rule requiring earlier action.

We are not aware of any regulation which would have required management to abolish Mr. Ruffo's job and separate

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In each of the cases cited above we predicated our allowance on a determination that the agency involved failed to comply with certain regulatory requirements. In the present case we are unable to determine that the Navy committed any error which would justify a retroactive change in Mr. Ruffo's separation date.

As a result, his claim is hereby denied.

*for* *Henry R. Ch. [Signature]*  
Comptroller General  
of the United States